

## CHAPTER 4. NOISE ABATEMENT AND CONTROL\*

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**\*Note**--Added by Ord. No. 3075 (N.S.), effective 6-15-67. Repealed and new Chapter 4 added by Ord. No. 4487 (N.S.), effective 10-17-74. Repealed and new Chapter 4 added by Ord. No. 6212 (N.S.), effective 2-4-82.

**Cross reference(s)**--Noise abatement procedures, § [85.441](#).

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### SEC. 36.401. PURPOSE AND INTENT.

The Board of Supervisors of the County of San Diego finds and declares that:

- (a) Inadequately controlled noise presents a growing danger to the health and welfare of the residents of the County of San Diego;
- (b) The making and creating of disturbing, excessive, offensive or unusually loud noises within the jurisdictional limits of the County of San Diego is a condition which has persisted and the level and frequency of occurrence of such noises continue to increase;
- (c) The making, creation or continuance of such excessive noises which are prolonged or unusual in their time, place and use effect and are a detrimental to the public health, comfort, convenience, safety, welfare, and prosperity of the residents of the County of San Diego;
- (d) Every person is entitled to an environment in which the noise is not detrimental to his or her life, health, and enjoyment or property; and
- (e) The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared to be a matter of legislative determination and public policy and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in the pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, prosperity, peace and quiet of the County of San Diego and its inhabitants.

### SEC. 36.402. DEFINITIONS.

Whenever the following words and phrases are used in this Chapter, unless otherwise defined herein, they shall have the meaning ascribed to them in this section:

- (a) Aircraft shall mean any powered vehicle which at any time of its operation is airborne, and is used to transport people or materials for whatever purpose.
- (b) Ambient Sound Level shall mean the composite noise from all sources near and far. In this context, the ambient noise level constitutes a normal or existing level of environmental noise at a given location and time.
- (c) Average Sound Level - a sound level typical of the sound levels at a certain place during a given period of time, averaged by the general rule of combination for sound levels, said general rule being set forth in American National Standard Specifications for Sound Level Meters S1. 4-1971. Average sound level is also called equivalent continuous sound level ( $L_{eq}$ ).
- (d) Commercial Purpose, Loud Speaking Amplifiers for Advertising, shall mean and include the use, operation or maintenance of any sound amplifying equipment for the purpose of advertising any business, or any goods, or any services, or for the purpose of attracting the attention of the public to, or advertising for, or soliciting patronage or customers to or for any performance, show, entertainment, exhibition, or event, or for the purpose of demonstrating such sound equipment.
- (e) Construction Equipment shall mean any tools, machinery or equipment used in connection with construction operations including all types of "special construction" equipment as defined in the pertinent sections of the California Vehicle Code when used in the construction process on any construction site, regardless of whether such construction site be located on-highway or off-highway.
- (f) Container shall mean any receptacle, regardless of contents, manufactured from wood, metal, plastic, paper, or any other material including but not limited to any barrel, basket, box, crate, tub, bottle, can or refuse container.
- (g) Decibel shall mean a unit for measuring the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals.
- (h) Emergency Work shall mean work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from imminent exposure to danger or damage or work by public or private utilities when restoring utility service.
- (i) Motor Vehicles shall mean any all and self-propelled vehicles as defined in the California Vehicle Code and shall specifically include, but not be limited to, "mini-bikes" and "go-carts."

(j) Noise Control Officer shall mean the Director of the Department of Planning and Land Use of the County of San Diego or his duly authorized representatives.

(k) Noise Level shall mean "sound level" and the terms may be used interchangeably herein.

(l) Noncommercial Purpose, Loud Speaking Amplifiers for Advertising, shall mean the use, operation, or maintenance of any sound equipment for other than a "commercial purpose." Noncommercial purpose shall mean and include, but shall not be limited to, philanthropic, political, patriotic, and charitable purposes.

(m) Person shall mean a person, firm, association, copartnership, joint venture, corporation, or any entity public or private.

(n) Powered Model Vehicles shall mean, but shall not be limited to airborne, waterborne, or landborne vehicles such as model airplanes, model boats, and model vehicles of any type or size which are not designed for carrying persons or property and which can be propelled in any form other than manpower or windpower.

(o) Sound Amplifying Equipment shall mean any machine or device, mobile or stationary used to amplify music, the human voice, or any sound.

(p) Sound Level (noise level) shall mean the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1971, or the latest revision thereof). If the frequency weighting employed is not indicated, the A-weighting is implied.

(q) Sound Level Meter shall mean an instrument, including a microphone, an amplifier, readout, and frequency weighting networks for the measurement of sound levels, which meets or exceeds the requirements pertinent for type S2A meters in the American National Standards Institute Specifications for Sound Level Meters, S1.4-1971 or the latest revision thereof.

(r) Sound Truck shall mean any motor vehicle or other vehicle regardless of motive power whether in motion or stationary having mounted thereon, built-in, or attached thereto any sound amplifying equipment other than a car radio or television.

(s) Disturbing, Excessive or Offensive Noise shall mean:

(1) any sound or noise which constitutes a nuisance involving discomfort or annoyance to persons of normal sensitivity residing in the area.

(2) any sound or noise exceeding criteria standards, or levels as set forth in this chapter.

(t) Water Craft shall mean any boat, ship, barge, craft or floating thing designed for navigation in the water which is propelled by machinery, whether or not such machinery is the principal source or propulsion, but shall not include a vessel possessing a valid marine document issued by the United States Bureau of Customs or any federal agency successor thereto.

(u) Supplementary Definitions of Technical Terms - definitions of technical terms not defined herein shall be obtained from the American National Standard, "Acoustical Terminology" S1. 1-1961 (R-1971) or the latest revision thereof.

(Amended by Ord. No. 7428 (N.S.), effective 2-4-88; amended by Ord. No. 8477 (N.S.), adopted 11-8-94, operative 1-1-95; amended by Ord. No. 8975 (N.S.), adopted 12-8-98, operative 1-2-99)

**Cross reference(s)**--Definitions, § [12.101](#) et seq.

#### **SEC. 36.403. SOUND LEVEL MEASUREMENT.**

(a) Any sound or noise level measurement made pursuant to the provisions of this ordinance shall be measured with a sound level meter using the A-weighting and "slow" response pursuant to applicable manufacturer's instructions.

(b) The sound level meter shall be appropriately calibrated and adjusted as necessary by means of an acoustical calibrator of the coupler-type to assure meter accuracy within the tolerances set forth in American National Standards ANSI-S1. 4-1971.

(c) For outside measurements, the microphone shall be not less than four (4) feet above the ground, at least four (4) feet distant from walls or other large reflecting surfaces and shall be protected from the effects of wind noises by the use of appropriate wind screens and the location selected shall be at any point on the affected property. In cases when the microphone must be located within ten (10) feet of walls or similar large reflecting surfaces, the actual measured distances and orientation of sources, microphone and reflecting surfaces shall be noted and recorded. In no case shall a noise measurement be taken within five (5) feet of the noise source.

(d) For inside measurements, the microphone shall be at least three (3) feet distant from any wall, ceiling or partition, and the average measurement of at least three (3) microphone positions throughout the room shall be determined.

#### **SEC. 36.404. SOUND LEVEL LIMITS.**

Unless a variance has been applied for and granted, it shall be unlawful for any person to cause or allow the creation of any noise to the extent that the one-hour average sound level, at any point on or beyond the boundaries of the property on which the sound is produced, exceeds the applicable limits set forth below, except that:

(1) Construction noise level limits shall be governed by Section 36.410 of this chapter; and

(2) Where a noise study has been conducted and the noise mitigation measures recommended by that study have been made conditions of approval of a Major Use Permit which authorizes the noise-generating use or activity, and the decision making body approving the Major Use Permit determined that those mitigation measures reduce potential noise impacts to a level below significance, then implementation and compliance with such noise mitigation measures shall be deemed to constitute compliance with this section.

Zone		APPLICABLE LIMIT ONE-HOUR AVERAGE SOUND LEVEL (DECIBELS)
R-S, R-D, R-R, R-MH, A-70, A-72, S-80, S-81, S-87, S-88, S-90, S-92, R-V, and R-U Use Regulations with a density of less than 11 dwelling units per acre.	7 a.m. to 10 p.m.	50
	10 p.m. to 7 a.m.	45
R-RO, R-C, R-M, C-30, S-86, R-V AND R-U Use Regulations with a density of 11 or more dwelling units per acre.	7 a.m. to 10 p.m.	55
	10 p.m. to 7 a.m.	50
S-94 and all other commercial zones.	7 a.m. to 10 p.m.	60
	10 p.m. to 7 a.m.	55
M-50, M-52, M-54	Anytime	70
S-82, M-58, and all other industrial zones.	Anytime	75

If the measured ambient level exceeds the applicable limit noted above, the allowable one hour average sound level shall be the ambient noise level. The ambient noise level shall be measured when the alleged noise violation source is not operating.

The sound level limit at a location on a boundary between two (2) zoning districts is the arithmetic mean of the respective limits for the two districts; provided however, that the one-hour average sound level limit applicable to extractive industries, including but not limited to borrow pits and mines, shall be

75 decibels at the property line regardless of the zone where the extractive industry is actually located.

Fixed-location public utility distribution or transmission facilities located on or adjacent to a property line shall be subject to the noise level limits of this section, measured at or beyond six (6) feet from the boundary of the easement upon which the equipment is located.

(Amended by Ord. No. 7094 (N.S.), effective 3-25-86; amended by Ord. No. 9478 (N.S.), effective 7-19-02)

#### **SEC. 36.405. MOTOR VEHICLES.**

(a) Repairs of Motor Vehicles. It shall be unlawful for any person within the County to repair, rebuild, or test any motor vehicle in such a manner as to cause disturbing, excessive or offensive noises as defined in Section 36.402(s) of this chapter.

(b) On-Highway. Violations for exceeding applicable noise level limits as to persons operating motor vehicles on a public street or highway in the County shall be prosecuted under applicable California Vehicle Code provisions and under Federal Regulation adopted pursuant to 42 U.S.C. 4905(a)(1)(A), (B), and (C)(ii), (iii) for which enforcement responsibility is delegated to local governmental agencies.

(c) Off-Highway. Except as otherwise provided for in this ordinance, it shall be unlawful to operate any motor vehicle of any type on any site other than on a public street or highway as defined in the California Vehicle Code in a manner so as to cause noise in excess of those noise levels permitted for On-Highway motor vehicles as specified in the table "35 miles per hour or less speed limits" contained in Section 23130 of the California Vehicle Code.

(d) Emergency Vehicles. Nothing in this section shall apply to authorized emergency vehicles when being used in emergency situations.

(e) Urban Transit Buses. Buses as defined in the California Vehicle Code shall at all times comply with the requirements of this section.

#### **SEC. 36.406. POWERED MODEL VEHICLES.**

It shall be unlawful for any person to operate any powered model vehicle except between the hours of 7 a.m. and 9 p.m. and then only in such a manner so as not to emit noise in excess of those levels set forth in Section 36.404; however, if powered model vehicles are operated in public parks at a point more than 100 feet from the property line, the noise level shall be determined at a distance of 100 feet from the noise source instead of at the property line, and

noises from powered model vehicles measured at that distance in excess of the noise limits specified in Section 36.404 are prohibited.

#### **SEC. 36.407. REFUSE VEHICLES & PARKING LOT SWEEPERS.**

No person shall operate, or permit to be operated, a refuse compacting, processing, or collection vehicle or parking lot sweeper between the hours of 10 p.m. to 6 a.m. in or adjacent to any residential zone unless a variance has been applied for and granted pursuant to this chapter.

(Amended by Ord. No. 7428 (N.S.), effective 2-4-88)

#### **SEC. 36.408. WATERCRAFT.**

Violations for excessive noise of watercraft operating in waters under the jurisdiction of the County of San Diego shall be prosecuted under applicable provisions of the California Harbors and Navigation Code.

#### **SEC. 36.409. AIRPORTS.**

All noise emanating from airport activities other than that produced by aircraft shall be subject to all of the regulations contained in this ordinance.

#### **SEC. 36.410. CONSTRUCTION EQUIPMENT.**

Except for emergency work, it shall be unlawful for any person, including the County of San Diego, to operate construction equipment at any construction site, except as outlined in subsections (a) and (b) below:

(a) It shall be unlawful for any person, including the County of San Diego, to operate construction equipment at any construction site on Sundays, and days appointed by the President, Governor, or the Board of Supervisors for a public fast, Thanksgiving, or holiday. Notwithstanding the above, a person may operate construction equipment on the above-specified days between the hours of 10 a.m. and 5 p.m. in compliance with the requirements of subdivision (b) of this Section at his residence or for the purpose of constructing a residence for himself, provided such operation of construction equipment is not carried on for profit or livelihood. In addition, it shall be unlawful for any person to operate construction equipment at any construction site on Mondays through Saturdays except between the hours of 7 a.m. and 7 p.m.

(b) No such equipment, or combination of equipment regardless of age or date of acquisition, shall be operated so as to cause noise at a level in excess of seventy-five (75) decibels for more than 8 hours during any twenty-four (24) hour period when measured at or within the property lines of any property which is developed and used either in part or in whole for residential purposes.

In the event that lower noise limit standards are established for construction equipment pursuant to State or Federal law, said lower limits shall be used as a basis for revising and amending the noise level limits specified in subsection (b) above.

#### **SEC. 36.411. CONTAINERS AND CONSTRUCTION MATERIAL.**

It shall be unlawful for any person to handle or transport or cause to be handled or transported in any public place, any container or any construction material in such a way as to create a disturbing, excessive, or offensive noise as defined under Section 36.402(s) of this ordinance.

#### **SEC. 36.412. SIGNAL DEVICE FOR FOOD TRUCKS.**

No person shall operate or cause to have operated or used any sound signal device other than sound-amplification equipment attached to a motor vehicle wagon or manually propelled cart from which food or any other items are sold which emits a sound signal more frequently than once every ten minutes in any one street block and with a duration of more than ten seconds for any single emission. The sound level of this sound signal shall not exceed ninety (90) decibels at fifty (50) feet.

#### **SEC. 36.413. MULTIPLE FAMILY DWELLING UNITS.**

Notwithstanding any other provisions of this ordinance it shall be unlawful for any person to create, maintain or cause to be maintained any sound within the interior of any multiple family dwelling unit which causes the noises level to exceed those limits set forth below in any other dwelling unit:

Type of Land Use			Allowable Interior Noise Level (dBA)	
			No Time	1 min in 1 hour 5 min in 1 hour
Multifamily	10 pm- 7 am	> 45	40	35
Residential	7 am-10 pm	> 55	50	35

( > greater than)

( less than or equal to)

The monitoring procedures outlined under Section 36.403 shall be followed in enforcing this section.

#### **SEC. 36.414. GENERAL NOISE REGULATIONS.**



(a) General Prohibitions. In the absence of objective measurement by use of a sound level meter, additionally it shall be unlawful for any person to make, continue, or cause to be made or continued, within the limits of said County, any disturbing, excessive or offensive noise which causes discomfort or annoyance to reasonable persons of normal sensitivity residing in the area.

The characteristics and conditions which should be considered in determining whether a violation of the provisions of this section exists, include, but are not limited to, the following:

- (1) The level of noise;
- (2) Whether the nature of the noise is usual or unusual;
- (3) Whether the origin of the noise is natural or unnatural;
- (4) The level of the background noise;
- (5) The proximity of the noise to sleeping facilities;
- (6) The nature and zoning of the area within which the noise emanates;
- (7) The density of the inhabitation of the area within which the noise emanates;
- (8) The time of the day or night the noise occurs;
- (9) The duration of the noise;
- (10) Whether the noise is recurrent, intermittent, or constant; and
- (11) Whether the noise is produced by a commercial or noncommercial activity.

(b) Disturbing, Excessive or Offensive Noises. The following acts, among others, are declared to be disturbing, excessive and offensive noises in violation of this section, but said enumeration shall not be deemed to be exclusive, namely:

(1) Horns, Signaling Devices, etc. Violations for disturbing, excessive or offensive noises associated with the use or operation of horns, signaling devices, etc., on automobiles, motorcycles, or any other vehicle, except as provided in Section 36.412, shall be prosecuted under applicable provisions of the California Vehicle Code.

(2) Radios, Television Sets, Phonographs, and Similar Devices.

(i) Uses Restricted. The use, operation, or permitting to be played, used or operated, any radio, musical instrument, phonograph, television set or other device for the production or reproduction of sound in such manner as to disturb the peace, quiet and comfort of neighboring residents or persons of normal sensitivity residing in the area; or in a manner to exceed those levels set forth in Section 36.404 when measured at a distance of twenty-five feet from such device operating in a public right-of-way or public space, except that subject to permit issued by the County of San Diego Parks and Recreation Department specifying time, location and other conditions, amplified sound may be permitted within county parks provided that said sound does not exceed a level of 90 decibels fifty feet from the source or exceed those levels set forth in Section 36.404 at the park boundary. This provision will be enforced by the Director, Parks and Recreation Department, or his duly authorized representative.

(ii) Prima Facie Violations. The operation of any such set, instrument, phonograph, television set, machine or similar device in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located, shall be prima facie evidence of a violation of this section.

(3) Loud Speaking Amplifiers for Advertising. The use, operation, or the permitting to be played, used or operated of any sound production or reproduction device or machine including but not limited to radio receiving sets, phonographs, musical instruments, loudspeakers, and sound amplifiers, for commercial or business advertising purposes in, upon, over, or across any street, alley, sidewalk, park, or public property in such a manner as to violate the provisions of this ordinance is prohibited. This provision shall not be applicable to sound amplifying equipment mounted on any sound truck or vehicle for commercial or noncommercial purposes where the owner or operator complies with the following requirements:

(i) The only sound permitted are music or human speech.

(ii) Operations are permitted between the hours of 8:00 a.m. and 9:00 p.m. or after 9:00 p.m. during public events and affairs of interest to the general public.

(iii) Sound amplifying equipment shall be not be operated unless the sound truck upon which such equipment is mounted is operated at a speed of at least ten (10) miles per hour, except when said truck is stopped or impeded by traffic. Where stopped by traffic the said sound amplifying equipment shall not be operated for longer than one minute at each stop.

(iv) Sound shall not be issued within one hundred (100) yards of hospitals, schools, churches, or courthouses.

(v) The volume of sound shall be controlled so that said volume is not raucous, jarring, disturbing, or a nuisance to persons within the area of audibility and so that the volume of sound shall not exceed a sound level of 65 decibels (on the "A" scale) at a distance of 50 feet from the sound amplifying equipment as measured by a sound level meter which meets the American National Standard ANSI S1. 4-1971 or the latest revision thereof.

(vi) No sound amplifying equipment shall be operated unless the axis of the center of any sound reproducing equipment used shall be parallel to the direction of travel of the sound truck; provided, however, that any sound reproducing equipment may be so placed upon said sound truck as to not vary more than 15° either side of the axis of the center of the direction of travel.

(vii) No sound truck with its amplifying device in operation shall be driven on the same street past the same point more than twice in a period of one hour.

(4) Yelling, Shouting, etc. Disturbing or raucous yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 10 p.m. and 8 a.m. or at any time or place so as to annoy or disturb the quiet, comfort, or repose of neighboring residents or persons of normal sensitivity within the area for whatever reason, is prohibited.

(5) Hawkers and Peddlers. The shouting or crying out of any peddlers, hawkers, and vendors which disturbs the peace and quiet of a neighborhood or persons of normal sensitivity is prohibited. This provision shall not be construed to prohibit the selling by outcry of merchandise, food and beverages at sporting events, parades, fairs, celebrations, festivals, circuses, carnivals and other similar special events for public entertainment.

(6) Drums, Other Instruments. The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise within the County is prohibited. This provision shall not apply to any person who is a participant in a school band or legally authorized parade or who has been otherwise duly authorized by the County of San Diego to engage in such conduct.

(7) Animals. The keeping or maintenance, or the permitting to be kept or maintained upon any premises owned, occupied, or controlled by any person of any animal which by any frequent or long continued noise shall cause annoyance or discomfort to persons of normal sensitivity in the vicinity; provided, however, that nothing contained herein shall be construed to apply to occasional noises emanating from legally operated dog and cat hospitals, humane societies, pounds, farm and/or agricultural facilities, or areas where keeping of animals are permitted. The written affirmation by two persons having separate residences

that violation of this section disturbs the peace and quiet of said persons shall be prima facie evidence of a violation of this section.

(8) Schools, Courts, Churches, Hospitals. The creation of any noise on any street, sidewalk, or public place adjacent to any school, institution of learning (except recreational areas of schools), church, court or library, while the same are in use; or adjacent to a hospital, rest home, or long-term medical or mental care facility which noise interferes with the workings of such institution or which disturbs or annoys patients in the hospital, rest home, or long-term medical or mental care facility, provided conspicuous signs are displayed in such streets, sidewalks, or public places indicating the presence of a school, institution of learning, church, court, library, rest home or long-term medical or mental care facility, is prohibited.

(9) Steam Whistles. The operation, use or causing to be operated or used of any steam whistle attached to any stationary boiler is prohibited except to give notice of the time to start or stop work or as a sound signal of imminent danger.

(10) Engines and Motor Vehicles. Any disturbing or raucous noises caused off streets or highways by racing or accelerating the engine of any motor vehicle while moving or not moving, by the willful backfiring of any engine and exhaust from the engine tailpipe or muffler, or from the screeching of tires, is prohibited.

#### **SEC. 36.415. BURGLAR ALARMS.**

Any building burglar alarm must have an automatic cutoff, capable of terminating its operation within 15 minutes of the time it is activated. Notwithstanding the requirements of this provision, any member of the Sheriff's Department of the County of San Diego shall have the right to take such steps as may be reasonable and necessary to disconnect any such alarm during the period of its activation.

No owner of a motor vehicle shall have in operation an audible burglar alarm therein unless such burglar alarm shall be capable of terminating its operation within fifteen (15) minutes of the time it is activated. Notwithstanding the requirements of this provision, any member of the Sheriff's Department of the County of San Diego shall have the right to take such steps as may be reasonable and necessary to disconnect any such alarm installed on a motor vehicle at any time during the period of its activation.

#### **SEC. 36.416. AIRCRAFT.**

Violations for exceeding applicable noise level limits as to persons operating aircraft shall be prosecuted under applicable law.

#### **SEC. 36.417. EXEMPTIONS.**

(a) Emergency Work. The provisions of this chapter shall not apply to any emergency work as defined herein, provided that (1) the Noise Control Officer has been notified in advance, if possible, or as soon as practical after said emergency, and (2) any vehicle device, apparatus, or equipment used, related to or connected with emergency work is designed, modified, or equipped to reduce sounds produced to the lowest possible level consistent with effective operation of such vehicle, device, apparatus, or equipment.

(b) Sporting, Entertainment, Public Events. The provisions of this chapter shall not apply to:

(1) Those reasonable sounds emanating from authorized school bands, school athletic and school entertainments events.

(2) Sporting, entertainment and public events which are conducted pursuant to a license or permit issued by the County of San Diego for noise exceeding criteria, standards or levels as set forth in this chapter.

(3) Those reasonable sounds emanating from a sporting, entertainment, or public event; provided, however, it shall be unlawful to exceed those levels set forth in Section 36.404 when measured at or within the property lines of any property which is developed and used either in part or in whole for residential purposes unless a variance has been granted allowing sounds in excess of said levels.

(c) Federal or State Preempted Activities. The provisions of this chapter shall not apply to any activity to the extent regulation thereof has been preempted by State or Federal law.

(d) Minor Maintenance to Residential Property. The provisions of Section 36.404 shall not apply to noise sources associated with minor maintenance to property used either in part or in whole for residential purposes provided said activities take place between the hours 7 a.m. and 8 p.m. on any day except Sunday, or between the hours of 10 a.m. and 8 p.m. on Sunday.

(e) Agricultural Operations. The provisions of Section 36.404 shall not apply to equipment associated with agricultural operations, provided that, all equipment and machinery powered by internal-combustion engines is equipped with a proper muffler and air intake silencer in good working order, and provided further that:

(1) Operations do not take place between 7 p.m. and the following 7 a.m.;

or

(2) Such operations and equipment are utilized for the preparation, planting, harvesting, protection or salvage of agricultural crops during periods of potential or actual frost damage or other adverse weather conditions; or

(3) Such operations and equipment are associated with agricultural pest control, provided the application is made in accordance with regulations or procedures administered by the County Department of Agriculture; or

(4) Such operations and equipment are associated with the application of agricultural chemicals provided the application is made in accordance with acceptable agricultural practices or upon the recommendation of an agricultural specialist.

(Amended by Ord. No. 7428 (N.S.), effective 2-4-88)

#### **SEC. 36.418. MANNER OF ENFORCEMENT.**

The County Sheriff shall have primary responsibility for the enforcement of Sections 36.405, 36.407, 36.408, 36.412, 36.414 and 36.415, provided, however, that whenever noise level measurements are required for enforcement, the Sheriff shall be assisted by the Noise Control Officer and/or his duly authorized representatives with instrumentation operated and provided by the Noise Control Officer. The Noise Control Officer shall have primary responsibility for the enforcement of all other provisions of this chapter. Pursuant to Penal Code Section 836.5 the above specified enforcement officers may arrest a person without a warrant when they have reasonable cause to believe that the person has committed a misdemeanor in their presence which is a violation of this chapter. Violations of these regulations will be prosecuted in the same manner as other misdemeanor violations of the County Code; however, nothing in these regulations shall prevent the Sheriff or the Noise Control Officer or his duly authorized representatives from efforts to obtain voluntary compliance by way of warning, notice or educational means.

**State law reference(s)**--Arrest without warrant, Penal Code, § 836.5.

#### **SEC. 36.419. VIOLATIONS -- MISDEMEANORS.**

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding five hundred dollars (\$500.00) or be imprisoned in the County jail for a period not exceeding six (6) months, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

#### **SEC. 36.420. VIOLATIONS -- ADDITIONAL REMEDIES: INJUNCTIONS.**

As an additional remedy the operation or maintenance of any device, instrument, vehicle, machinery, or other item in violation of any provision of this chapter for which operation or maintenance causes discomfort or annoyance to persons of normal sensitivity or which endangers the comfort, repose, health, or peace of residents in the area, shall be deemed and is declared to be a public nuisance and shall be subject to summary abatement in order to preserve or protect the public health, safety or welfare, abatement by a restraining order or injunction issued by a court of competent jurisdiction, or by abatement and assessment in accordance with the Uniform Public Nuisance Abatement Procedure contained in Chapter 2, Division 6, Title 1 (commencing with Section 16.201) of this Code.

(Amended by Ord. No. 7141 (N.S.), effective 6-26-86)

#### **SEC. 36.421. FALSE STATEMENT.**

No person shall knowingly make a false statement or submit a false document to the Noise Control Officer as to any matter within his jurisdiction.

#### **SEC. 36.422. REPRODUCTIONS OF PERMITS, ETC.**

No person shall make, reproduce, alter, or cause to be made, reproduced, or altered a permit, certificate, or other document issued by the Noise Control Officer or required by this chapter if the purpose of such reproduction or alteration is to evade or violate the provisions of this chapter.

#### **SEC. 36.423. DISPLAY OF PERMITS.**

Any permit, certificate, or other notice required herein shall be displayed or maintained on the premises designated thereon.

#### **SEC. 36.424. VARIANCES.**

The Noise Control Officer shall evaluate all applications for variances from the requirements of this article and may grant said variances with respect to time for compliance, subject to such terms, conditions, and requirements as he may deem reasonable to achieving compliance with the provisions of this Chapter. Each such variance shall set forth in detail the approved method of achieving compliance and a time schedule for its accomplishment. If in the judgment of the Noise Control Officer the time for compliance cannot be reasonably determined, a variance to cause the noise may be issued for a specified period of time, subject to revocation or modification after review by the Noise Control Officer at interim times to be designated by the Noise Control Officer in the variance. In determining the reasonableness of the terms of any proposed variance, said Noise Control Officer shall consider the magnitude of nuisance caused by the offensive noise, the uses of property within the area of impingement by the noise, operations carried on under existing nonconforming rights or conditional use

permits or zone variances, the time factors related to study, design, financing and construction of remedial work, the economic factors related to age and useful life of the equipment and general public interest and welfare.

#### **SEC. 36.425. APPLICATIONS FOR PERMITS AND VARIANCES.**

Every applicant for a permit or variance required by this chapter shall file with the Noise Control Officer a written application on a form prescribed by said Officer. The application shall state the name and address of the applicant, the nature of the noise source involved, and such other information as the Noise Control Officer may require.

#### **SEC. 36.426. APPLICATION FEES.**

Every applicant, except any state or local governmental agency or public district, shall pay a fee of \$25.00 for each application for variance.

A request for a duplicate permit or variance shall be made in writing to the Noise Control Officer within 10 days after the destruction, loss, or defacement of a permit or variance. A fee of \$5.00 shall be charged, except to any state or local government agency or public district, for issuing a duplicate permit or variance.

#### **SEC. 36.427. EXTENSION FEES.**

If a permit or variance is to be extended beyond the original use termination on date of permit or variance, the extension fee shall be \$25.00.

#### **SEC. 36.428. ACTIONS ON APPLICATIONS.**

The Noise Control Officer shall act, within 30 days, if possible, on an application for a permit or variance and shall notify the applicant in writing by mail or in person of the action taken, namely, approval, conditional approval, or denial. Notice of the action taken shall be deemed to have been given when the written notification has been deposited in the mail, postpaid, addressed to the address shown on the application, or when personally delivered to the applicant or his representative. Before acting on an application for a variance or permit, the Noise Control Officer may require the applicant to furnish further information or further plans or specifications. Failure of the applicant to provide such further information or further plans or specifications within 10 days shall be grounds for denial of the permit or variance.

In the event of denial of an application for a permit or variance, the Noise Control Officer shall notify the applicant in writing of the reasons therefor. Service of this notification may be made in person or by mail, and such service may be proved by the written acknowledgment of the persons served or affidavit of the person making the service. The Noise Control Officer shall not accept a further



application unless the applicant has complied with the objections specified by the Noise Control Officer as his reasons for denial.

#### **SEC. 36.429. APPLICATIONS DEEMED DENIED.**

The applicant may at his option deem the permit or variance denied if the Noise Control Officer fails to act on the application within 30 days after filing, or within 10 days after applicant furnishes the further information, plans and specifications requested by the Noise Control Officer, whichever is later.

#### **SEC. 36.430. PROVISION OF SAMPLING AND TESTING FACILITIES.**

A person operating under a permit or variance shall provide and maintain such sampling and testing facilities as specified in the permit or variance.

#### **SEC. 36.431. APPEALS.**

Within 10 days after notice, by the Noise Control Officer, of denial or conditional approval of a variance or a permit, or within 10 days after the effective date of the revocation of a permit or variance by the Noise Control Officer, the affected person may petition the Noise Control Hearing Board, in writing, for a public hearing. The Hearing Board, after notice and a public hearing after filing the petition, may sustain, reverse or modify the action of the Noise Control Officer; such order may be made subject to specified conditions.

#### **SEC. 36.432. FILING FEE.**

Request for hearing shall be initiated by the filing of a petition in triplicate with the Clerk of the Hearing Board at the County of San Diego Administration Center at 1600 Pacific Highway, San Diego, California and the payment of a fee of \$25.00. A copy of the petition shall also be served on the Noise Control Officer. Service may be made in person or by mail and service may be proved by written acknowledgment of the person served or by the affidavit of the person making service.

#### **SEC. 36.433. CONTENTS OF PETITION.**

A petition to review a denial or conditional approval of a permit or variance shall include a copy of the permit or variance application, and a copy of the Noise Control Officer's action setting forth the reasons for the denial or the conditions of the approval, and the reasons for appeal. A petition to review a permit or variance revocation shall include a copy of the permit or variance, the Noise Control Officer's revocation notice, including his reasons for revocation, and the reasons for appeal.

#### **SEC. 36.434. DISMISSAL OF PETITION.**

The petitioner may dismiss his petition at any time before submission of the case to the Noise Control Hearing Board, without a hearing or meeting of the Noise Control Hearing Board. The Clerk of the Noise Control Hearing Board shall notify all interested persons of such dismissal.

#### **SEC. 36.435. PLACE OF HEARING.**

All hearings shall be held at the Hearing Room, 1600 Pacific Highway, San Diego, California, unless some other place is designated by the Noise Control Hearing Board.

#### **SEC. 36.436. NOTICE OF HEARING.**

The Clerk of the Noise Control Hearing Board shall mail or deliver a notice of hearing to the petitioner and the Noise Control Officer.

#### **SEC. 36.437. EVIDENCE.**

- (a) Oral evidence shall be taken only on oath or affirmation.
- (b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.
- (c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

#### **SEC. 36.438. PRELIMINARY MATTERS.**

Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, allowing amendments and other preliminary rulings not determinative of the merits of the case may be made by the chairman or any two members of the Noise Control Hearing Board without a hearing or meeting of the Noise Control Hearing Board and without notice.

#### **SEC. 36.439. OFFICIAL NOTICE.**

The Noise Control Hearing Board may take official notice of any matter which may be judicially noticed by the courts of this State.

#### **SEC. 36.440. CONTINUANCES.**

The chairman or any two members of the Hearing Board shall grant any continuance of 15 days or less, concurred in by petitioner, and the Noise Control Officer, and may grant any reasonable continuance; in either case such action may be ex parte, without a meeting of the Hearing Board and without prior notice.

#### **SEC. 36.441. DECISION.**

The Hearing Board may affirm, modify or overrule the Noise Control Officer's decisions on variance applications, and shall be guided by the same considerations as set forth in Section 36.424 of this chapter. The affirmative vote of not less than five (5) members of the Hearing Board shall be necessary for any action of the Board. The decision shall be by written order. If requested by either party, the decision shall contain a brief statement of facts found to be true, the determination of the issues presented and the order of the Hearing Board. A copy of the decision shall be mailed or delivered to the Noise Control Officer and the petitioner, and to every person who files a written request for the decision with the Clerk of the Board of Supervisors.

#### **SEC. 36.442. EFFECTIVE DATE OF DECISION.**

The decision shall become effective 15 days after delivering or mailing a copy of the decision, as provided in Section 36.441 or the Hearing Board may order that the decision shall become effective sooner.

#### **SEC. 36.443. SEVERABILITY.**

If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or applications of the provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are hereby declared to be severable.